Regular Session, 2011

HOUSE BILL NO. 415

BY REPRESENTATIVE LOPINTO

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

CRIMINAL/PROCEDURE: Authorizes probation and parole officers to impose administrative sanctions for technical violations

AN ACT

To amend and reenact R.S. 15:574.7(B) and to enact R.S. 15:574.7(C) and Code of Criminal Procedure Article 899.1, relative to probation and parole; to authorize probation and parole officers to impose administrative sanctions for technical violations; to provide for limitations; to provide for definitions; to provide for procedures; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 15:574.7(B) is hereby amended and reenacted and R.S. 15:574.7(C) is hereby enacted to read as follows:

§574.7. Custody and supervision of parolees; modification or suspension of supervision; violation of conditions of parole; sanctions; alternative conditions<u>; administrative sanctions</u>

* * *

<u>B.(1) At the time a defendant is released on parole, the Board of Parole may make a determination as to whether a defendant is eligible for the imposition of administrative sanctions as provided for in this Section. If authorized to do so by the board, each time a parolee violates a condition of parole, a parole officer may use administrative sanctions to address a technical violation committed by a parolee when all of the following occur:</u>

CODING: Words in ~~struck through~~ type are deletions from existing law; words <u>underscored</u> are additions.

(a) The parolee, after receiving written notification of his right to a hearing before a court and right to counsel, provides a written waiver of a parole violation hearing.

(b) The parolee admits to the violation or affirmatively chooses not to contest the violation alleged in the parole violation report.

(c) The parolee consents to the imposition of administrative sanctions by the Department of Public Safety and Corrections.

(2) The department shall promulgate rules to implement the provisions of this Subsection to establish the following:

(a) A system of structured, administrative sanctions which shall be imposed for technical violations of parole and which shall take into consideration the following factors:

(i) The severity of the violation behavior.

(ii) The prior violation history.

(iii) The severity of the underlying criminal conviction.

(iv) The criminal history of the parolee.

(v) Any special circumstances, characteristics, or resources of the parolee.

(vi) Protection of the community.

(vii) Deterrence.

(viii) The availability of appropriate local sanctions, including but not limited to jail, treatment, community service work, house arrest, electronic surveillance, restitution centers, work release centers, day reporting centers, or other local sanctions.

(b) Procedures to provide a parolee with written notice of the right to a parole violation hearing to determine whether the parolee violated the conditions of parole alleged in the violation report and the right to be represented by counsel at state expense at that hearing if financially eligible.

(c) Procedures for a parolee to provide written waiver of the right to a parole violation hearing, to admit to the violation or affirmatively choose not to contest the

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

violation alleged in the parole violation report, and to consent to the imposition of administrative sanctions by the department.

(d) The level and type of sanctions that may be imposed by parole officers and other supervisory personnel.

(e) The level and type of violation behavior that warrants a recommendation to the board that parole be revoked.

(f) Procedures notifying the parolee and the Board of Parole of a violation admitted by the parolee and the administrative sanctions imposed.

(g) Such other policies and procedures as are necessary to implement the provisions of this Subsection and to provide adequate parole supervision.

(3) If the administrative sanction imposed pursuant to the provisions of this Subsection is jail confinement, the confinement shall not exceed ten days per violation and shall not exceed a total of sixty days per year.

(4) For purposes of this Subsection, "technical violation" means any violation of a condition of parole as defined in R.S. 15:574.9(G)(2).

~~B.~~C.(1) If the chief probation and parole officer, upon recommendation by a parole officer, has reasonable cause to believe that a parolee has violated the conditions of parole, he shall notify the board, and shall cause the appropriate parole officer to submit the parolee's record to the board. After consideration of the record submitted, and after such further investigation as it may deem necessary, the board may order:

(a) The issuance of a reprimand and warning to the parolee.

(b) That the parolee be required to conform to one or more additional conditions of parole which may be imposed in accordance with R.S. 15:574.4.

(c) That the parolee be arrested, and upon arrest be given a prerevocation hearing within a reasonable time, at or reasonably near the place of the alleged parole violation or arrest, to determine whether there is probable cause to detain the parolee pending orders of the parole board.

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

(2) Upon receiving a summary of the prerevocation proceeding, the board may order the following:

(a) The parolee's return to the physical custody of the Department of Public Safety and Corrections, corrections services, to await a hearing to determine whether his parole should be revoked.

(b) As an alternative to revocation, that the parolee, as a condition of parole, be committed to a community rehabilitation center or a substance abuse treatment program operated by, or under contract with, the department, for a period of time not to exceed six months, without benefit of good time, provided that such commitment does not extend the period of parole beyond the full parole term. Upon written request of the department that the offender be removed for violations of the rules or regulations of the community rehabilitation center or substance abuse program, the board shall order that the parole be revoked, with credit for time served in the community rehabilitation center.

Section 2. Code of Criminal Procedure Article 899.1 is hereby enacted to read as follows:

Art. 899.1. Administrative sanctions for technical violations

A. At the time of sentencing, the court may make a determination as to whether a defendant is eligible for the imposition of administrative sanctions as provided for in this Article. If authorized to do so by the sentencing court, each time a defendant violates a condition of his probation, a probation agency may use administrative sanctions to address a technical violation committed by a defendant when all of the following occur:

(1) The defendant, after receiving written notification of the right to a hearing before a court and the right to counsel provides a written waiver of a probation violation hearing.

(2) The defendant admits to the violation or affirmatively chooses not to contest the violation alleged in the probation violation report.

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

(3) The defendant consents to the imposition of administrative sanctions by the Department of Public Safety and Corrections.

B. The department shall promulgate rules to implement the provisions of this Article to establish the following:

(1) A system of structured, administrative sanctions which shall be imposed for technical violations of probation and which shall take into consideration the following factors:

(a) The severity of the violation behavior.

(b) The prior violation history.

(c) The severity of the underlying criminal conviction.

(d) The criminal history of the probationer.

(e) Any special circumstances, characteristics, or resources of the probationer.

(f) Protection of the community.

(g) Deterrence.

(h) The availability of appropriate local sanctions, including but not limited to jail, treatment, community service work, house arrest, electronic surveillance, restitution centers, work release centers, day reporting centers, or other local sanctions.

(2) Procedures to provide a probationer with written notice of the right to a probation violation hearing to determine whether the probationer violated the conditions of probation alleged in the violation report and the right to be represented by counsel at state expense at that hearing if financially eligible.

(3) Procedures for a probationer to provide written waiver of the right to a probation violation hearing, to admit to the violation or affirmatively choose not to contest the violation alleged in the probation violation report, and to consent to the imposition of administrative sanctions by the department.

(4) The level and type of sanctions that may be imposed by probation officers and other supervisory personnel.

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

(5) The level and type of violation behavior that warrants a recommendation to the court that probation be revoked.

(6) Procedures notifying the probationer, the district attorney, the defense counsel of record, and the court of probation of a violation admitted by the probationer and the administrative sanctions imposed.

(7) Such other policies and procedures as are necessary to implement the provisions of this Article and to provide adequate probation supervision.

C. If the administrative sanction imposed pursuant to the provisions of this Article is jail confinement, the confinement shall not exceed ten days per violation and shall not exceed a total of sixty days per year.

D. For purposes of this Article, "technical violation" means any violation of a condition of probation, except for an allegation of a subsequent criminal act.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Lopinto HB No. 415

Abstract: Authorizes probation and parole officers to impose administrative sanctions for technical violations.

Present law provides that any offender who has been released on parole and whose parole supervision is being revoked for his first technical violation of the conditions of parole, shall be required to serve not more than 90 days without diminution of sentence or credit for time served prior to the revocation for a technical violation.

Present law provides that any defendant who has been placed on probation by the drug division probation program, and who has had his probation revoked for a technical violation of drug division probation, may be ordered to be committed to the custody of DPS&C and be required to serve a sentence of not more than six months without diminution of sentence in the intensive incarceration program.

Present law provides that any defendant who has been placed on probation by the court for the conviction of an offense other than a crime of violence or of a sex offense, and whose probation is revoked for a first technical violation of probation, shall be required to serve a sentence of not more than 90 days without diminution of sentence or credit for time served prior to the revocation for a technical violation.

Present law defines "technical violation".

Proposed law retains present law and authorizes a parole officer or probation officer to impose administrative sanctions for a technical violation of parole or probation conditions,

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

if the Board of Parole or court determines that the offender is eligible for the imposition of administrative sanctions, and when all of the following occur:

(1) The offender, after receiving written notification of the right to a hearing before a court and right to counsel, provides a written waiver of a violation hearing.

(2) The offender admits to the violation or affirmatively chooses not to contest the violation alleged in the violation report.

(3) The offender consents to the imposition of administrative sanctions.

Proposed law requires DPS&C to promulgate rules to implement the provisions of proposed law, including but not limited to rules to establishing the following:

(1) A system of structured, administrative sanctions.

(2) Procedures to provide the offender with written notice of the right to a hearing and procedures for the offender to provide a written waiver of such rights.

(3) The level and type of violation behavior that warrants a recommendation that parole or probation be revoked.

(4) Procedures for providing notification of the violation and the administrative sanctions imposed.

Proposed law provides that if the administrative sanction imposed is jail confinement, the confinement shall not exceed 10 days per violation and shall not exceed a total of 60 days per year.

(Amends R.S. 15:574.7(B); Adds R.S. 15:574.7(C) and C.Cr.P. Art. 899.1)

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.